

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
21<sup>st</sup> JUDICIAL DISTRICT, LEWIS COUNTY**

KEVIN P. LAVENDER, in his Official Capacity as  
Commissioner-in-possession of  
Sentinel Trust Company  
AND RECEIVERSHIP MANAGEMENT, INC.,  
Receiver Of Sentinel Trust Company,

*Plaintiffs*

v.

DANNY N. BATES, CLIFTON TODD BATES,  
HOWARD H. COCHRAN, GARY L. O'BRIEN,  
DEANNA JUNE BATES  
And SENTINEL SERVICES CORPORATION,

*Defendants*

Civil Action No. 4980

**JURY DEMANDED**

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ANSWER AND SPECIAL DEFENSES  
OF DEFENDANTS DANNY N. BATES AND SENTINEL SERVICES CORPORATION

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**PART I.**

Come Defendants Danny N. Bates and Sentinel Services Corporation responding jointly and severally to Plaintiffs' Complaint with the following answer and special defenses, and because the Complaint is so extremely repetitious in its errors, they preliminarily make the following affirmative allegations for incorporation as part of their responses to the complaint:

PRELIMINARILY, a truthful narrative of the way Sentinel Trust Company (hereinafter, "SENTINEL") conducted its trust business is essential to an understanding of this conflict,

because Plaintiffs are confused in their assumption that all moneys paid out of SENTINEL's pooled deposit accounts of were trust funds, when competent investigation by said Plaintiffs would have proven the truth of said Defendant's testimony. SENTINEL kept its books and records and accounts in accordance with the recommendations or requirements set forth in the *Trust Manual* of the Federal Deposit Insurance Corporation, which manual is recognized and relied upon as the principal guidance for fiduciary operations and examinations. All of the alleged shortfall in fiduciary cash was supported and reconciled to the advances, fees and expenses for defaulted bond issues, not corporate expenditures of SENTINEL or personal expenditures by Defendants. The following sub-paragraphs give an accurate narrative of the system of handling receipts, disbursements, and keeping accurate records regarding the same—

(i) At all times, the pooled deposit accounts were composed of many different accounts from which the ownership of each monetary transaction was determinable. There was never any confusion as to the identity of any account-owner whose money was held within the pooled accounts, because ownership was determined and is still determinable from SENTINEL's books and computerized records (including, but not limited to Quick-Books, which replaced an earlier DOS program, MoneyCounts for Businesses. The separately-owned accounts consisted of one or more account for each trust account, each of which owned the funds therein subject to the claims of its settlors, beneficiaries or bondholders and accounts for SENTINEL and others, including accounts for Defendants' money and suspense accounts.

(ii) Proper book-keeping entries were made for each transaction, so that each owner's money received was credited to that owner's account and every disbursement for each owner was charged against such owner's account. It was at all times a simple matter to determine which entity's funds were received or expended by consulting such records, since every time SENTINEL had a receipt or disbursement of money or other assets, the same was properly credited to or debited against the appropriate account or accounts. All of the foregoing has been previously established by said Bates' testimony under oath in the Davidson County Chancery

Court, putting Plaintiffs under an obligation to investigate such records to the extent needed to prove or disprove such testimony, as explained in the following sub-paragraphs. .

(iii) On the occasions of which Plaintiffs complain when checks were issued on a Sentinel account for the personal benefit of Defendant Danny N. Bates, the checks were charged against his personal account #70-07056-00 at Sentinel Trust Company. For the entire period of SENTINEL's operation, and for every day of every year, each bank deposit account showed the accurate amount of its balance, whether it belonged to one of the funds of within the trust department pertaining to a trust or suspense account, to SENTINEL, to Defendant Bates or to anyone else.

(iv) At the close of every banking day, all moneys in master deposit bank accounts over a minimum fixed amount were "swept" into an overnight investment earning market interest rate until the beginning of the next banking day (*e.g.*, overnight or for multiple days when the banks were closed for week-ends or holidays). Statements were provided on each banking day showing the rate and amount received, and at the end of every month, every account of every trust account with investable balances were credited with its pro rata share of the interest earnings.

(v) Whenever a bond issue of any issuer went into default, SENTINEL was obligated to "foreclose" on the pledged collateral by spending money within that bond issues' accounts held in trust or spending money secured by SENTINEL's first lien on the collateral for all its own fees and expenses. Moneys spent on behalf of and charged against the trust account of any bond-issuer in excess of exceeded the cash in its trust account created a cash overdraft in that particular account, secured by the collateral, but SENTINEL's schedule of fees and charges had always provided for imposing an overdraft charge of 1½% per month. No part of such charge enured to the benefit of either SENTINEL or Defendants, but all of it was held in the master deposit account for benefit for all trust accounts with investable cash balances, on a pro-rata basis. Based on Plaintiff's collections in liquidating the collateral of a number of bond funds

since seizure of SENTINEL's business and property, the total collections, inclusive of overdraft charges on defaulted bond issues, should have produced cash in total more than sufficient to retire all trust departments overdrafts and receivables.

(vi) In pursuing its collateral-liquidation obligations after the health-care bond issuers began defaulting around 1996–1999, SENTINEL successfully closed out over 50 secured issues in default, that is, such accounts went into overdraft status, some in excess of \$1 million (including the monthly-compounded interest charges), and SENTINEL recovered the full accounts receivable on each, increasing the secure status of the pooled fund. Hence its experience, of which the Tennessee Department of Financial Institutions (hereinafter, DEPARTMENT) was fully aware, proved the financial soundness of this approach

(vii) SENTINEL had, upon information and belief, followed the procedure uniformly adhered to by trust institutions and considered its procedure a sound, permissible, and lawful for the following reasons:

(a) The examination procedures followed by the DEPARTMENT in examining banks and trust institutions are believed to be in accordance with Federal procedures, that is, by following the F.D.I.C.'s *Trust Manual* and *Manual of Examination Policies*. The DEPARTMENT has not promulgated separate, detailed examination procedures and regulations for the few trust institutions, and the Federal guidelines are the only ones known to be in existence and are believed to be the rules the DEPARTMENT's examiners customarily recognize and claim to follow.

(b) The aforesaid FDIC Manual gives introductory general instructions for interpreting the specific terms thereof, including the following:

“As a fiduciary, the bank's primary duty is the management and care of property for others. This responsibility requires the duty of loyalty, the duty to keep clear and accurate accounts, the duty to preserve and make productive trust property, as well as a myriad of other responsibilities. Refer to Section 4, Common Law duties.

\* \* \* \*

“The body of common law is much more voluminous and detailed than civil law. Therefore, management should have at least a general familiarity with some of the more widely known common law authorities such as Scott, Bogert, and the *Restatement of the Law of Trusts*. ”

(*FDIC Trust Manual* §§ 1.A., 4A.3.a.; emphasis added)

By its terms, the foregoing recognizes that a leading authority for uniform determination of trust law is the *Restatement of Trusts*.

(c) Concerning the handling of trust funds by corporate fiduciaries which may administer hundreds or thousands of trusts, the *Restatement* says in part:

*“Where the trustee holds the funds of numerous beneficiaries, and it would be unreasonable and not subserve any purpose in protecting the interests of the beneficiaries of the several trusts to require him to keep separate the funds of the different trusts, it may be proper for the trustee to mingle funds of the different trusts by deposit thereof in a common bank account. Thus, ordinarily a trust company can properly deposit in a single trust account in another bank the funds of several trusts, provided that it keeps an accurate record of the contributions of the separate trusts.”*  
(*Restatement of Trusts*, §179, Illustration 1)

Thus, the *Restatement of Trusts*, which is also judicially considered a primary authority by Tennessee, recognizes that it is permissible and proper for a trust institution to pool trust funds in a single bank account, with ownership of the different funds within the pooled account being recognized on the books of the trust institution—not the depository bank—as the appropriate way to manage many accounts without losing identity of ownership.

(d) In recognition of the methodology approved by the *Restatement of Trusts*, the F.D.I.C. *Trust Manual* provides in part:

*“A master deposit account is a single interest-bearing deposit account in which the temporary funds of individual trust accounts are commingled. The master deposit account is often a money market deposit account of the fiduciary institution. Only deposits are involved, no other types of assets are held in the master deposit account. The number of trust accounts invested in and the balance of the master deposit account may vary from day*

to day. *This is not a common or collective investment fund. The concerns with a master deposit account include, management's ability to: identify the amount of funds attributable to each trust account invested in the master deposit account, ensure that the funds of each trust account is not left in the master deposit account as a long term investment, determine how FDIC insurance applies to the trust account invested in the master deposit account, and identify conflicts of interest.*"

(F.D.I.C. Trust Manual, § 7, ¶ N.1.; Emphases added).

This is precisely the method followed at all times by SENTINEL, whose records always showed the ownership of each trust account, and the moneys were held temporarily in the pooled account.

(e) The F.D.I.C. Trust Manual further provides in part:

*"Management must establish a formal system of monitoring uninvested funds. The combined income and principal cash of all the department's accounts are generally deposited into one account. The key consideration is not the aggregate amount on deposit, but rather, the reasonableness of the uninvested balances of the individual accounts, considering both the individual account's liquidity requirements and the fiduciary's duty to make trust property productive."* (F.D.I.C. Trust Manual, § 8, ¶ 2.; Emphasis added)

SENTINEL's method of handling the pooled trust funds fully complied with these requirements, compliance with the investment requirement provisions having at all times been secured by SENTINEL's agreement with its correspondent bank, requiring daily "sweeps" of all but the minimum amount into an overnight investment account earning market interest rates.

(f) The F.D.I.C. Trust Manual further provides in part:

*"When data processing systems are in use, it is common practice to post all properly encoded items, regardless of whether an overdraft is created. . . . The total of the resulting practice is to post all properly encoded debit items, regardless of whether an overdraft is created. . . . Cash items and related records usually are in the custody of one employee [of the trust company] . . ."* (F.D.I.C. Trust Manual, § 3.4; emphasis added).

Sentinel's mode of handling trust funds, and permitting overdrafts for bond issues adequately secured was precisely identical to the mode recognized as proper by the quoted section and followed by trust departments of banks having fiduciary powers, which SENTINEL had followed for many years with the full knowledge of the DEPARTMENT and without any objections expressed by it.

The DEPARTMENT's bank and trust examiners normally follow the *Trust Manual* and *Manual of Examination Policies* published by the Federal Deposit Insurance Corporation to guide and conduct their examinations of banks and other fiduciary institutions, which standards are recognized throughout the nation. The DEPARTMENT's executives, under the direction of Plaintiff LAVENDER, by condemning SENTINEL's practices that were in accord with the above-quoted guide-lines evinced either a lack of competent knowledge as to the proper conduct of a trust company business or a deliberate attempt to manufacture pretext to destroy SENTINEL.

In addition to the foregoing summary of SENTINEL's business practices and the factual allegations in Defendants' answer, the following specific denials or allegations also must be considered to comprehend both sides of these disputes:

FIRST: Defendants and each of them deny that they breached their fiduciary duty, that they committed any acts or omissions not in good faith or which involved intentional misconduct or knowing violation of law. If any fiduciary duty was inadvertently breached, it would have been a mere technical breach, not causing any loss to any bond settlor or bond-holder, and therefore would not give rise to any liability.

SECOND: Defendants and each of them deny that they committed any acts or omissions not in good faith or which involved intentional misconduct or knowing violation of law.

THIRD: Plaintiffs' allegations are based upon factual assumptions that are false, are not warranted by evidence, and are not made in good faith, in view of the knowledge and information under their control, including the following:

(i) the false assumption that Sentinel Trust Company was insolvent when Plaintiff Commissioner seized it;

(ii) The unwarranted assumption of law that the word "bank" in the Tennessee Banking Act definitionally includes a trust company or a corporation doing a trust business even though the provisions of TCA §45-2-1701 clearly forbid non-banks from conducting a banking business;

- (iii) The unwarranted assumption that SENTINEL's assets held in a fiduciary capacity only, categorized by it originally as "overdrafts" and later, upon accounting advice, as Trust Department Receivables, were a liability of Sentinel in its corporate capacity;
- (iv) The unwarranted assumption that the insolvency of bond issues in default, wherein other trust assets were being pursued for conversion to cash to liquidate cash deficiencies, constituted insolvency of SENTINEL in any capacity;
- (v) Plaintiffs' refusal to recognize that upon each liquidation collection, their fiduciary obligation was to apply the first moneys received, after immediate collection costs, to the pooled demand deposit bank account maintained by SENTINEL for fiduciary accounts toward overcoming all trust account overdraft or receivable balances, including monthly interest;
- (vi) The allegation that Clifton Todd Bates, Howard H. Cochran and Gary L. O'Brien, each of whom were elected as directors on or about December 30, 1999 may be charged with directorial actions before they became directors of SENTINEL;
- (vii) The allegation that Deanna June Bates held or exercised any management or check writing authority over any of SENTINEL's bank accounts at any time;
- (viii) the allegation that the expenditure of personal funds owned or controlled by Danny N. Bates, the controlling stockholder of SENTINEL and Sentinel Services Corporation, constituted the expenditure of corporate or fiduciary funds; and
- (ix) the assumption that the fees and expenses advanced by SENTINEL as a fiduciary for each bond-issuer and carried on its Trust Department records as overdrafts or receivables should have been funded from personal funds owned or controlled by Defendant Danny Bates or by SENTINEL in its corporate capacity.

FOURTH: Plaintiffs' allegations are made in bad faith to intimidate Defendants and to retaliate for Defendants' lawful opposition to the unwarranted actions of Plaintiffs taken under color of law.

FIFTH: Plaintiffs falsely assert diversions of money even though the examined and audited books and records of SENTINEL clearly showed that the advances, fees and expenses carried as Trust Department Receivables, were expenditures properly charged and reported for accounting and tax purposes on SENTINEL's corporate books and its Trust Department records. Plaintiffs were, or should have been, able to confirm the facts by analysis of all of SENTINEL's records under their exclusive control and by referral to examinations and audits conducted by the Tennessee Department of Financial Institutions and independent auditors from 1999 to the date of seizure, in the following detailed respects:

- (i) The DEPARTMENT conducted its first examination of the books and records of SENTINEL and its fiduciary accounts in the Spring of 2000, utilizing four examiners for 206 man hours to conduct its examination; its second examination for the period ending December 31, 2000, utilizing two examiners for 349 man hours; its third examination as of April 22, 2002, utilizing four examiners for 353 man hours; and commenced another examination in 2003, expending hundreds of man hours, but never delivered a completed report to the Board of Directors of SENTINEL. At all times, the complete books and records of SENTINEL were made available to DEPARTMENT examiners.
- (ii) Welch & Associates, Nashville, Tennessee, which had done SENTINEL's tax returns from about 1989, delivered its balance sheet audit report for the years 2000 and 2001 dated as of April 19, 2002 in compliance with DEPARTMENT's requirements for an external audit. At all times, Welch & Associates had complete access to all of SENTINEL's books and records.
- (iii) Kraft CPAs, Columbia, Tennessee, was engaged on or about August 25, 2003 to complete the audit for 2002 and conduct the audit for calendar year 2003, in replacement of Welch & Associates, which resigned its audit duties on or about July 16, 2003. In addition, at the recommendation of Kraft CPAs, James Brewer, CPA, Lawrenceburg, Tennessee, was subsequently engaged to audit and reconcile independently by month the corporate and fiduciary bank accounts of SENTINEL for the two year period ending December 31, 2003. At all times, Kraft CPAs and James Brewer CPA had complete access to all of SENTINEL's books and records and their findings were available to the DEPARTMENT.

SIXTH: By pursuing the collection of moneys due from defaulted bond issuers SENTINEL had underway when it was seized by Plaintiff Lavender on May 18, 2004, Plaintiffs have already collected funds more than sufficient to offset and discharge all amounts held as Trust Department Receivables and replenish the fiduciary cash balance held in the "pooled fiduciary account."

(i) According to the sworn affidavit of Vivian S. Lamb, CEM, Program Administrator for the Trust Examination Division of the DEPARTMENT, dated May 3, 2004, Kraft CPAs had identified fiduciary accounts receivable of approximately \$7.5 million resulting from expenditures made in connection with defaulted bond issues and related unreimbursed costs and expenses as of the December 31, 2002 audit. On the date of seizure of SENTINEL Trust Company by Plaintiffs, SENTINEL's books and records showed that \$7,198,244.43 was currently being carried as Trust Department Receivables, including approximately \$15,000 in fees then due from registrar/paying agency accounts, and including the overdraft charges on defaulted bond issues.

(ii) According to the 2004 Annual Report for the DEPARTMENT, as of December 31, 2004, Plaintiffs were holding \$7,191,949 in cash for SENTINEL's fiduciary accounts, comprising the "pooled demand deposit account" with a reported balance of \$2,462,793 and another deposit account holding \$4,729,156 in cash for defaulted bond accounts. The said Annual Report also estimated SENTINEL's assets at \$2,186,500 and total liabilities of \$7,860,000, without justification for such estimate of liabilities, for an alleged deficiency of \$5,783,500 (not the \$8 million or more set forth in the Complaint), which was more than offset by the approximately \$7.2 million in trust funds held separate and apart from the estimated assets of SENTINEL.

(iii) Based on Motions submitted after December 31, 2004 to the Lewis County Chancery Court pertaining to three of the defaulted bond issues, Plaintiffs subsequently collected approximately \$5,576,401 from those issues, which total collections should have been first deposited into the "pooled demand deposit account" which the said defaulted bond issues were owed reimbursement of at least \$1.9 million plus overdraft charges at the monthly rate of 1.5% from April 30, 2004.

(iv) According to Motions filed with the Lewis County Chancery Court after December 31, 2004, Plaintiffs have credited the "pooled demand deposit account" with only \$315,486.09 and are now holding total cash estimated at more than \$9 million apart from the "pooled fiduciary account."

(v) The Trust Department of SENTINEL had received in 2003 and was holding 26,111 shares of the common stock of Sun Healthcare Group, Inc. at zero cost basis from Sun Healthcare's Chapter 11 receiver, the sale of which at the approximately market value of about \$210,000 was not approved by Plaintiff Lavender prior to seizure. Such stock should have been sold and sale proceeds should have been credited to the "pooled demand deposit account" for further credit to the various bond issues connected with the Sun Healthcare Chapter 11 bankruptcy. No such sale has been reported.

(vi) In summary, Plaintiffs have, or should have, collected, from the sale of Trust Department assets, sums significantly in excess of the \$7.2 million balance carried as Trust Department Receivables at the time of seizure for deposit into the "pooled fiduciary account". Plaintiffs held, as of December 31, 2004, cash and other assets significantly in excess of the liabilities estimated by Plaintiffs.

## PART II.

### ANSWER

FOR ANSWER TO THE SPECIFIC ALLEGATIONS OF THE NUMBERED PARTS AND PARAGRAPHS OF THE COMPLAINT, DEFENDANTS MAKE THE FOLLOWING RESPONSES:

1. ADMITTED that Kevin P. Lavender (LAVENDER) is the incumbent Commissioner of the Tennessee Department of Financial Institutions, DENIED that he lawfully holds the position of “statutory Commissioner-in-Possession,” and DENIED as to LAVENDER's authority to seize and possess SENTINEL and to assert a lien *lis pendens* regarding property on behalf of any receivership estate and “claimants” to that estate, DENIED that the bond issuers have assigned their asserted claims to LAVENDER, and DENIED that there has been a valid appointment of a Receiver over SENTINEL.

2. ADMITTED that LAVENDER is Commissioner of the Tennessee Department of Financial Institutions but DENIED that his actions in filing the Complaint are authorized by virtue of his official capacity as Commissioner or that his official capacity empowers him to file such Complaint.<sup>1</sup> To the Contrary, when LAVENDER, as here, takes positions that a corporate fiduciary subject to his administrative authority has become insolvent, he is charged with notice that authoritative decisions agree that such fiduciary's corporate estate does not include the moneys it holds in trust, which are therefore not subject to use by the seizing authority.

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<sup>1</sup>Responding to the Complaint's Footnote 1, the referenced decision did not enunciate any holding as to the construction of the statute under which the Commissioner claims to act, which rulings, being presently on appeal, have no *res judicata* effect under Tennessee law.

3. DENIED as to identity of Receiver. Pursuant to notice filed in the Lewis County Chancery Court on May 18, 2004, LAVENDER claimed to have appointed "Jeanne Barnes Bryant/Receivership Management, Inc." as Receiver. DENIED that he had legal authority to so act, because there is no statute which vests him with such authority over trust companies, as distinguished from banks.
4. ADMITTED.
5. ADMITTED except it is DENIED that Todd Bates was "The Trust Officer."
- 6.-9. ADMITTED.
10. DENIED; the Complaint does not state any valid claim, but as to the status of bond-issuers, the only entities identified as possible "claimants," they are in fact trust settlors, not creditors, and any damages any one or more of them may have suffered are entirely unliquidated, in that the fault for the sufferance of such damages lies with the Plaintiff Commissioner.
11. ADMITTED, if the Court has subject-matter jurisdiction, *i.e.*, if the plaintiffs are vested with any valid cause of action.
12. ADMITTED to be only an accurate statement of Plaintiffs' contentions, otherwise DENIED.
13. DENIED, SENTINEL not being or having been insolvent and because Docket No. 4781 is not a civil action, but only the mistaken invocation of the Court's statutory jurisdiction to approve or disapprove certain discrete acts, which jurisdiction is created by statute when the Plaintiff Commissioner seizes a **state bank**, but not upon his action in seizing a state trust company by force of arms and without any lawful writ to authorize his actions.
14. DENIED.

15. DENIED: For the reasons set out above, the Commissioner had no authority to seize a trust company upon pretense of its insolvency, and even when he has such authority (as in the seizure of an insolvent **state bank**), such does not vest him with any ownership rights or rights to control the disposition of trust assets as distinguished from corporate assets.

16.-17. DENIED.

18. The first sentence is DENIED as not being an allegation of well-pleaded facts but merely a summary of Plaintiff's unsupported suppositions, which are meaningless even with that status in the absence of identification of what person or persons Plaintiffs secretly have in their minds, being invalid as allegations under Rule 8, T.R.Civ.P. All remaining allegations of legal assumptions are DENIED.

19. DENIED, such allegations having been made by virtue of Plaintiffs' having failed to competently investigate and analyze the documents and records that they wrongfully seized, and whose substance and effects they are suppressing by failure give to them their proper effect, the accurate facts being as alleged in Part I hereof.

20. DENIED that such defendants have caused loss to the trust corpuses of the bond issuers held in a pooled trust fund, in which fund Plaintiffs have no lawful interest and would have none even if SENTINEL had been insolvent and the seizure had been authorized by law, and DENIED that any defendant other than Danny Bates had responsibility in making those particular disbursements which appear to be the basis of Plaintiff's suppositions sought to be judicially accepted herein.

21. ADMITTED that SENTINEL Trust Company was incorporated in Tennessee under the Tennessee General Corporations Act in November, 1975 and specifically empowered to conduct a trust business.

22. ADMITTED that at a special meeting of stockholders in May, 1999 a charter amendment was first adopted moving the principal office from Davidson County to Lewis County but that the submission of such charter amendment to the Tennessee Secretary of State

was deferred until approval by the DEPARTMENT and this was not effectuated until May, 2001.

23. DENIED as to the characterized grant and limitation of powers. SENTINEL's specified for profit purposes were (1) to act as trustee, executor, receiver, administrator, assignee but not to engage in or carry on the business of banking; (2) to act as agent or broker; (3) to act as fiscal agent; (4) to lend money; (5) to own, buy, sell and lease real and personal property; and (6) to serve as adviser and manager, while retaining all other powers permitted to corporations..

24.-26. DENIED as not being well-pleaded facts, but opinionated attempted statements of legal contentions, the facts of which may be accurately paraphrased, to the extent relevant, by saying that, as to all trust moneys SENTINEL received as a trustee pursuant to bond indentures, such money were trust moneys and SENTINEL was a fiduciary.

27. ADMITTED that the passage of the Acts of 1999 subjected SENTINEL and three other previously grandfathered companies doing a trust business to all provisions of the Tennessee Banking Act applicable by their terms to trust companies and, additionally, subjected them to departmental examination for the limited 3-year period that ended June 30, 2002.

28. DENIED as an inaccurate allegation of the operations of SENTINEL, which received substantial amounts of moneys other than pursuant to explicit provisions of bond indentures, but to the extent that it received remittances pursuant to such indentures, the amounts and times of payment were as provided by each indenture, which also specified the exact times and amounts of each required disbursement as well as the amounts of permitted disbursements, such as fees and expenses.

29. ADMITTED that bond issuers were required to make bond payments and that SENTINEL would make scheduled disbursements to bond-holders from such available funds. DENIED that the allegation accurately describes all of SENTINEL's services. Additionally, with respect to indenture trusteeships such bond issuers were in many instances, but not all, obligated

to make monthly payments at 1/12th the annual principal next coming due and 1/6th of the next interest instalment to be disbursed to bond-holders.

30. ADMITTED that bond issuers delivered payments to be held in trust pending scheduled disbursement by SENTINEL but DENIED that all moneys coming into SENTINEL were for such purpose. The allegations lack the specificity required to be meaningful.

31. ADMITTED that Defendant Danny N. Bates opened, supervised and controlled various bank accounts of SENTINEL Trust Company.

32. DENIED, and the allegations lack the specificity required to be meaningful, with the Plaintiffs perhaps having failed to grasp the uniformity of SENTINEL's handling its accounts due to the inadequacy of any investigation they may have attempted to make.

33. DENIED as to allegation of manipulation but ADMITTED that Defendant Danny N. Bates opened, supervised and controlled various bank accounts, the accurate facts being as alleged in Part I hereof. ADMITTED that SENTINEL changed banking relationships and accounts from time to time for sound business reasons.

34. DENIED.

35. ADMITTED that Defendant Danny N. Bates supervised and controlled bank accounts in the name of Sentinel Services Corporation and SENTINEL but DENIED that deposits and disbursements therein constituted misappropriation of corporate or trust funds.

36. ADMITTED that Defendant Danny N. Bates held personal funds owned or controlled by him in his companies, which were in separate accounts on Sentinel's books, but DENIED as to allegations of intentional abuse, negligent mismanagement, misappropriation or misdirection either with or without any specific intent as alleged, the accurate facts being as alleged in Part I hereof.

37. DENIED.

38. DENIED. In fact, the residence does not have an "indoor-outdoor swimming pool" as alleged; it has an outdoor pool. ADMITTED that Defendant Danny N. Bates purchased or authorized the purchase of automobiles for business use through SENTINEL and purchased other vehicles for personal use from personal funds held with SENTINEL and clearly shown at all times on Sentinel's books as being appropriate, to said defendant's individual funds or SENTINEL's funds, the accurate facts being as alleged in Part I hereof.

39. DENIED as to use of trust funds. Additionally, in fact, the residence is not carpeted. However, about 1,000 square feet of the office space used by SENTINEL at 205 Bastin Road from 1998 until 2001 was carpeted. It is ADMITTED that necessary road and fire protection improvements were made to support the business activities of SENTINEL Trust Company conducted at the Bastin Road location from 1998 to 2001.

39. ADMITTED that various personal expenditures were made by Defendant Danny N. Bates from personal funds owned or controlled by him held with SENTINEL, and were properly entered in the appropriate account.

40. DENIED as to payment of personal expenses from funds other than those personally owned or controlled by Defendant Danny N. Bates, or which were not appropriately reimbursed by said Defendant.

41. DENIED as to payment of personal expenses from funds other than those personally owned and controlled by Defendant Bates and held by him with SENTINEL, the accurate facts being as alleged in Part I hereof.

42. DENIED as to payment of personal expenses to or for family members from funds other than those personally owned or controlled by Defendant Danny N. Bates, and so shown on SENTINEL's books, or which were not appropriately reimbursed by said Defendant, the accurate facts being as alleged in Part I hereof.

43. ADMITTED that Defendant Danny N. Bates received checks in payment of salary and reimbursement for personal expenses incurred for business purposes which were credited to

his personal account on SENTINEL's books and from which personal expenditures were debited. DENIED that Deanna June Bates made direct withdrawals of any amount; she having had no check-writing or withdrawal authority over any SENTINEL account, the accurate facts being as alleged in Part I hereof. DENIED that Defendant Clifton Todd Bates made direct withdrawals to himself.

44. DENIED.

45. ADMITTED that Defendant Danny N. Bates controlled SENTINEL's corporate and fiduciary bank accounts. DENIED that SENTINEL Trust corporate and fiduciary funds were spent on matters related solely to the benefit and enjoyment of himself and his family members, the accurate facts being as alleged in Part I hereof.

46-51. DENIED. On each and every occasion when Danny Bates caused moneys to be disbursed to or for himself, they were charged to and therefore disbursed from accounts from which he had the right to make or receive such disbursements.

52. ADMITTED that Defendant Danny N. Bates approved expenditures to improve the property, held in the name of SENTINEL at 312 Bastin Road and then being rented with intent to purchase by Defendant Clifton Todd Bates, which expenditures were repaid in full upon the sale of the property. DENIED as to misdirection or misappropriation of funds. ADMITTED that Defendant Danny N. Bates directed the payment of \$575,000 to settle a lawsuit against SENTINEL, such transaction being described and accounted for on SENTINEL's 2000-2001 audit report by Welch & Associates. DENIED that the funds were fiduciary assets.

53. ADMITTED that some 63 bond issues trustee by SENTINEL went into default, thereby obligating SENTINEL to liquidate each such bond issue's collateral for the benefit of affected bondholders, subject to SENTINEL's first priority lien for recovery of its fees, charges, and expenses of collection. All other allegations are DENIED.

54. DENIED.

55. DENIED. During the time frame cited, NationsBank was one of the primary correspondent banks for SENTINEL, and only later did SunTrust become the primary correspondent bank in which trust funds were properly pooled without commingling upon proper understanding of that term in relation to trust company operations as alleged in Part I hereof.

56. ADMITTED that SENTINEL held various demand deposit accounts with its correspondent banks for corporate and fiduciary benefit without commingling, as alleged in Part I hereof.

57. DENIED. The accounts held for SENTINEL in its corporate and fiduciary capacities were separately detailed and accounted for, without loss of identify of ownership or purpose of deposit or withdrawal, on its corporate and fiduciary books and records, as required by the custom and the applicable rules governing trust institution records, as alleged in Part I hereof.

58. ADMITTED that Defendant Danny N. Bates recorded transactions in the various bank accounts held by SENTINEL and controlled the accounts in accordance with customary conduct of business, with all receipts and disbursements, credits and debits recorded promptly after each transaction as alleged in Part I hereof. DENIED that said Defendant "manipulated" the accounts or transactions therein.

59. DENIED.

60. ADMITTED that fees and expenses of many defaulted bond issues exhausted their immediate cash resources on hand at the occurrence of default, the non-provision of cash and exhaustion of debt service reserves being the hallmark of a defaulting bond issue. ADMITTED that Defendant Danny N. Bates recorded or caused to be recorded expenses on defaulted bond issues after review, approval, and/or payment by Paul Williams, SENTINEL's Executive Vice President for Corporate Trust Administration, and James A. Skinner, SENTINEL's independent contractor responsible for workout of defaulted bond issues. DENIED that unrelated bond issuers or borrowers were charged with the recovery expenses of defaulted bond issues, as accurately alleged in Part I hereof.

61. DENIED.

62. ADMITTED that overdrafts were properly incurred in the administration of defaulted bond accounts as accurately alleged in Part I hereof. ADMITTED that all fiduciary accounts existed on the books and records of SENTINEL and that that payments for such accounts were made from SENTINEL's bank accounts, with each such transaction properly recorded, the accurate facts being as alleged in Part I hereof.

63. DENIED that the accounts of unrelated bond issuers or borrowers were charged with the recovery expenses of defaulted bond issues on any occasion, the accurate facts being as alleged in Part I hereof.

64-65. DENIED.

66. ADMITTED that the total amount of Trust Department Receivables carried on the books of SENTINEL's Trust Department was approximately \$7.2 million at the time of seizure by Plaintiffs, such account classification having been made at the recommendation of SENTINEL's auditors. DENIED that actions of Defendant Danny N. Bates constituted a "scheme," but to the contrary were known to Plaintiffs before and after May 18, 2004, when SENTINEL was seized by force.

67. DENIED that the manner and method of funding the recovery of collateral of defaulted bond issues had been concealed from parties entitled to know and DENIED that the same represented a misuse of fiduciary funds, the accurate facts being as alleged in Part I hereof.

68. DENIED that Defendants had the duty to inform bond issuers about the expenditures made of behalf of unrelated, defaulted bond issuers or that unrelated bond issuers or borrowers were charged with the expenses of defaulted bond issues, such being the normal way of doing business by trust institutions, as accurately alleged in Part I hereof.

69. DENIED that Defendants had the duty to disclose information about defaulted bond issues to unrelated parties and the remaining allegations are denied as being mere speculation by Plaintiffs, rather than well-pleaded facts.

70. DENIED. Defendants aver that the manner and method of handing expenses of defaulted bond issues were known and reviewed by DEPARTMENT, SENTINEL's auditors, responsible professionals and legal counsel and were justifiably believed to be industry practice, as accurately alleged in Part I hereof.

71. DENIED; as Plaintiffs well know the total collections on defaulted bond issues are more than sufficient to repay in full all non-defaulted bond issues already transferred to successor fiduciaries, and from said collections the Plaintiffs have knowingly and corruptly refused to deposit into the pooled trust deposit account the total overdraft balance on each collection of collateral liquidation, including added 1½ per month charges, compounded monthly, so that if there remains any shortage in the pooled trust funds it is due to Plaintiffs' intentional misapplication of funds collected.

72. ADMITTED that Defendant Danny N. Bates was at all times a Director and the President and chief financial officer of SENTINEL Trust Company, controlling the accounts, books and records of SENTINEL Trust Company and recording various transactions therein DENIED that said Defendants knew or engaged in any unlawful or deceitful practice in breach of duties or contractual obligations owed to SENTINEL or its fiduciary accounts or beneficiaries thereof, as accurately alleged in Part I hereof.

73. ADMITTED that on or about December 30, 1999, Defendants Clifton Todd Bates, Howard Cochran, Gary O'Brien, Stephen Bates and Bradley Lancaster were elected as directors, joining Defendant Danny N. Bates who had been serving as the sole Director since 1989, but none of the said new directors had knowledge or need to know the details of SENTINEL's crediting and debiting different accounts in the proper amounts to reflect actual transactions, as accurately alleged in Part I hereof. DENIED as to all other allegations.

74. DENIED from lack of knowledge of motivation of Plaintiff Lavender but ADMITTED that Plaintiffs unilaterally and peremptorily seized and possessed SENTINEL Trust Company on May 18, 2004. ADMITTED that Plaintiff Lavender appointed "Jeanne Barnes Bryant/Receivership Management Inc" as Receiver. In so acting without legal authority, Plaintiffs evinced apparent ignorance of the status of SENTINEL's records, as accurately alleged in Part I hereof, thus acting upon their own false conclusions rather than facts which should have been known to them from repeated examinations, in which there was open to Plaintiff Lavender's examiners all records of SENTINEL.

75. DENIED as to characterization of motivation of Danny Bates, and the implication of the quality of his acts, inasmuch as said Defendant Danny Bates had assets exceeding his liabilities, and it is ADMITTED that Deanna June Bates owns the Bates residence at 205 Bastin Road, Hohenwald, Tennessee. Furthermore, SENTINEL had no liabilities other than trivial amounts of current expenses within its ability to pay, and SENTINEL had recognized, by formal communication to the DEPARTMENT (and implicitly accepted by it) and acknowledged ultimate responsibility for any contingent liability to deposit in the pooled trust fund any shortfall, after completion of collateral-liquidation on all defaulted bond funds, in any bond funds as shown on Sentinel's accounts, all as accurately alleged in Part I hereof. Such acknowledgment of liability was communicated by letter to the Tennessee Department of Financial Institutions on April 16, 2003, and no official in that Department made any communication indicating a belief that such undertaking was inadequate, so that SENTINEL and its directors were wholly justified in assuming the adequacy of such concession since the assumption of liability was well within SENTINEL's ability to borrow and since its future potential liability was limited by T.C.A. § 35-3-117(j)(1) to the total amount of payments that SENTINEL shall have missed making to bondholders upon the due dates from funds remitted to SENTINEL for that purpose, inasmuch as SENTINEL never missed making any distributions it was obligated to make on any bonds on the due dates thereof. Nor would there ever have been any shortfall in the ordinary course of SENTINEL's business, as actually conducted, because it could know by computation based upon current balances in its various bank accounts if the balance on hand were inadequate to meet such

bond obligations, and it then could and would have injected sufficient funds to assure that its checks would be honored.

76. Defendant Danny N. Bates ADMITS he spent personal funds owned or controlled by him to acquire property, some of which was registered in the name of Sentinel Services Corporation, and DENIES that corporate funds of SENTINEL Trust Company were improperly used and DENIES that funds held on behalf of SENTINEL's bond issuers, borrowers or bondholders were used, the allowance of overdrafts against adequately collateralized bond accounts being a practical necessity and being the accepted and approved course of conducting the trust company business in the United States.

77. DENIED. Based on reports filed by Plaintiffs, the issuers of non-defaulted bond accounts and other fiduciary accounts held approximately \$6.34 million in positive cash balances as of the date of seizure of SENTINEL Trust Company. With approximately \$2.5 million then held in the "pooled demand deposit account" and the collections from defaulted bond issuers reported to the Lewis County Chancery Court since May 18, 2004, Plaintiffs have funds on hand sufficient to pay the amounts due to all non-defaulted bond issuers without loss, except for Plaintiffs' misapplication of funds..

78. DENIED. Based on Plaintiff's representations made in support of motions filed in the Lewis County Chancery Court, as to amounts collected from the sale of Trust Department assets in default, Plaintiffs have received and hold sums well in excess of the \$7.2 million balance carried as Trust Department Receivables at the time of seizure.

79. DENIED as to lack of information or facts to confirm or deny the truthfulness of the allegations, but further DENIED that there could be any "fiduciary account shortfall" except for that caused by Plaintiffs' failure to properly apply the proceeds of collateral liquidation, DENIED that bond-issuers are properly claimants against SENTINEL as distinguished from the Plaintiffs themselves, and DENIED, in view of Plaintiffs' inaccurate view of the facts, that such bond-issuers have not been given a truthful account of the facts essential to permit them to determine whether they believe they have a claim against SENTINEL. Defendants further ALLEGE that the

alleged “approval of all of these entities” is legally inadequate to constitute the grant by the bond issuers, as trust settlors, to Plaintiffs, of the authority to act as their agents in pursuing claims Plaintiff alleges that they hold.

80. DENIED as to authority of LAVENDER and his RECEIVER to represent the interests of bondholders and/or bond issuers and borrowers. To the contrary, with an essential part of the basis of their claimed authority being the pretended insolvency of SENTINEL, when said company was not insolvent, because as a matter of settled Federal and Tennessee law, a liquidating receivership over a corporate fiduciary on belief of its insolvency gives the liquidating authority no rights over trust funds, but only as to the corporate fiduciary’s own funds.

81. Defendants incorporate answers to ¶¶ 1-80 above.

82-83. DENIED.

84. DENIED, and Defendants allege that Plaintiffs do not have the status of entities standing in SENTINEL’s shoes for the reasons alleged in ¶ 80 above, among others.

85. DENIED, because of the lack of any misappropriation during SENTINEL’s management of its business.

86. DENIED, Defendant having had the absolute right to convey his property to his wife on the date alleged, and neither having been insolvent on that date nor having had any fraudulent intent.

87. Defendants incorporate answers to ¶¶ 1-86 above.

88. ADMITTED that Defendant Danny N. Bates held a fiduciary position in relation to SENTINEL in his capacities as chief executive and financial officer of SENTINEL, but SENTINEL itself, rather than said Defendant, was the fiduciary in relation to entities as to which it served as trustee or in similar capacities..

89. ADMITTED that a fiduciary is obligated to act with fidelity and in the best interest of fiduciary accounts. DENIED that said Defendant breached those duties.

90. DENIED that Defendant Danny N. Bates breached his fiduciary duties or misused or otherwise converted fiduciary assets.

91-92. DENIED.

93. DENIED.

94. DENIED.

95-96. DENIED.

97. Defendants incorporate answers in ¶¶ 1-96 above.

98. ADMITTED that Defendant Danny N. Bates held a fiduciary position in relation to SENTINEL in his capacities as chief executive and financial officer of SENTINEL, but SENTINEL itself, rather than said Defendant, was the fiduciary in relation to entities as to which it served as trustee or in similar capacities..

99. DENIED that said Defendant failed to disclose information required to be disclosed affecting bond issuers, borrowers and bondholders.

100-101. DENIED.

102. DENIED, and further the "allegations" are not well-pleaded facts but mere speculation.

103. DENIED.

104. DENIED.

105. DENIED.

106. DENIED

107. Defendants incorporate answers in ¶¶ 1-106 above.

108. ADMITTED that Defendants Danny N. Bates, Clifton Todd Bates, Howard H. Cochran and Gary L. O'Brien are presently serving as directors of SENTINEL but DENIED as to relevancy of such time period to any rights or powers of Plaintiffs.

109. ADMITTED.

110-113. DENIED.

114. Defendants incorporate answers in ¶¶ 1-113 above.

115. DENIED. The duties of SENTINEL as fiduciary were set forth in singular and unique trust documents prepared by bond counsel for each corporate trust bond issue, in a bond registrar/paying agent agreement prepared by bond counsel for each tax-supported municipal bond issues and by specifically drawn trust documents for each other fiduciary account.

116. DENIED since the identity and nature of future claimants and their actual claims are not known to Defendants, the bond issuers and bondholders not being proper claimants for the reasons stated above.

117-119. DENIED.

120. Defendants incorporate answers in ¶¶ 1-119 above.

121-124. DENIED.

125. Defendants incorporate answers in ¶¶ 1-124 above.

126. ADMITTED.

127. DENIED.

128. Defendants incorporate answers in ¶¶ 1-127 above.

129-134. DENIED; and further, such allegations by Plaintiffs are made without a thorough and competent investigation of the facts, although such facts have been given by unrefuted testimony in the Davidson County Chancery Court in the presence and hearing of Plaintiffs' attorneys, so that Plaintiffs, simply by giving attention to the facts laid before them, could and should have determined all facts as to the true state of SENTINEL's accounts (as shown accurately in Part I above), would inevitably have been confirmed by competent and *bona fide* investigation. Hence, Plaintiffs' allegations are false and malicious, and Plaintiffs and each of them knew or should have known that the same were false before they framed and filed the complaint herein.

135. Defendants now DENY all allegations of the Complaint except those hereinbefore expressly either admitted or denied.

### **PART III**

#### **SPECIAL DEFENSES**

FIRST: The DEPARTMENT and its officers are denied the power to impair the obligations of contracts, including the vested contractual rights which SENTINEL is obligated to protect, in its own right and in its obligation to act as trustee, paying agent, and registrar, which power of impairment is denied by the Constitution of the United States, Article I, Section 10, and by the Constitution of Tennessee, Article I, Section 20, and Article XI, Section 16.

SECOND: The exercise of the power to seize private property for public purposes without just compensation, carried out by the DEPARTMENT, its officers, and Plaintiff LAVENDER

individually, all acting under color of law, is prohibited by the Constitution of the United States, Fifth Amendment and Fourteenth Amendment, Section 1 and by the Constitution of Tennessee, Article I, Section 8 and Article XI, Section 16.

THIRD: The powers claimed by LAVENDER pursuant to Tennessee Code Annotated §45-1-107(a)5, §45-1-107(b), §45-1-107(e), and §45-2-1502(b)2 were based on orders that may be issued with reference to state banks, but not to corporations doing a trust business, and are therefore actions taken without due process of law, contrary to the Constitution of the United States, Fifth Amendment and Fourteenth Amendment, Section 1 and by the Constitution of Tennessee, Article I, Section 8 and Article XI, Section 16.—

(a) The principal characteristic of a trust company is that it does not accept or hold deposits and all moneys it holds in trust are deposited its separate fiduciary bank account or accounts in which it has no proprietary interest except for the right to withdraw, at intervals, such fees and trust expenses authorized by trust indentures. In recognition of the fact that trust funds are the property of trust beneficiaries or grantors rather than creditors, it is established that, in the event of insolvency of such a corporate fiduciary, such trust funds are not subject to the powers of officials enforcing the rights of either the corporate fiduciary or its creditors, *Caplin, Trustee, v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 92 S.Ct. 1678, 32 L.Ed.2d 195 (1972), with Tennessee in accord, *Wagner, Trustee v. Citizens Bank & Trust Co.*, 122 Tenn. 164, 122 S.W. 245 (1909).

(b) When SENTINEL Trust Company was organized in 1975, Tennessee had no statute specific to the incorporation of a trust company, except that the Banking Act, pursuant to the amending Acts of 1969, had included the term “trust company” in the context of minimum capital requirements and had specifically forbidden non-banks to carry on a “banking business” by provisions of *Tennessee Code Annotated* (TCA) §45-2-1701. The provisions of the Acts of 1980 required “state trust companies” as defined in said Acts to be organized thereafter under the appropriate provisions of the Banking Act. In addition, the Acts of 1980 also provided that: “the existence and operation of any trust company formed prior to the effective date of this act shall not be impaired by the enactment of this act.”

(c) The RECEIVER, appointed by LAVENDER to liquidate SENTINEL Trust Company and as his liquidating agent, has no powers greater than its/her principal, LAVENDER, who purportedly claims authority to do so under the specific provisions of TCA §45-2-1504, which spells out the duties and powers in liquidation. There is no authority therein contained to initiate such actions as set forth in the Complaint.

FOURTH: On information and belief, the bank and trust examiners of the Tennessee Department of Financial Institutions rely on the *Trust Manual* and *Manual of Examination Policies* published by the Federal Deposit Insurance Corporation to guide and conduct their examinations of banks and other fiduciary institutions. The allegations of Plaintiffs that the Defendants acted improperly or not in conformity with common practices in the trust business are false and Plaintiffs knew or should have known their allegations were false.

FIFTH: There is no statute purporting to vest the Commissioner of the Tennessee Department of Financial Institutions with power to remove trustees, which power, to the limited extent that Tennessee legislation has created it, is a judicial power vested in the chancery courts under T.C.A. Title 35, pertaining to trusts and fiduciaries, including banks with trust powers and trust companies.

SIXTH: The charges set forth in the Complaint, even if there were basis for such charges, are time-barred since LAVENDER and his predecessors in office knew or should have known the alleged facts forming the basis of the Complaint. TCA §45-1-127 provides that "Any claim for a breach of a fiduciary responsibility of a financial institution or any officer or employee thereof may be only asserted with the time provided in TCA §48-18-601." TCA §48-18-601 provides that: "Any action alleging breach of fiduciary duties by directors or officers . . . must be brought within one (1) year from the date of such breach or violation; provided, that in the event the alleged breach or violation is not discovered nor reasonably should have been discovered within the one (1) year period, the period of limitation shall be one (1) year from the date such was discovered or reasonably should have been discovered. In no event shall any such action be brought more than three (3) years after the date on which the breach or violation occurred, except where there has been fraudulent concealment on the part of the defendant, in which case

the action shall be commenced within one (1) year after after the alleged breach or violation is, or should have been, discovered.”

SEVENTH: Plaintiffs, and particularly Plaintiff LAVENDER, are estopped from filing this action against SENTINEL’s directors, because their sole claim of power to seize, liquidate, and destroy SENTINEL is based upon their unwarranted insistence that said non-depository trust company is a bank, and in the exercise of his bank-seizure powers under T.C.A. §§ 45-2-1502 and -1504, the Commissioner of Financial Institutions is prohibited from attempting to hold corporate directors liable for any breach of financial obligations (except upon the basis of allegations not made here) by T.C.A. § 45-1-125, which provides:

**45-1-125. Liability of director or officer of financial institution in receivership or reorganization.**— A director or officer, including a former director or officer of a financial institution, *shall not be liable to the financial institution in receivership or reorganization or to the receiver, shareholders, depositors or creditors of the closed financial institution* for money damages for breach of fiduciary duty, unless the claim or action arises out of the breach of the director's duty of loyalty to the financial institution or for acts or omissions not in good faith or which involved intentional misconduct or knowing violation of the law by such director or officer during the director's or officer's term of office with such financial institution. For purposes of this section, “financial institution” means a bank organized under the laws of this state, a national bank with its principal office in this state, a savings and loan association or savings bank organized under the laws of this state, or a federal savings and loan association or federal savings bank with its principal office in this state. The provisions of this section shall apply both retrospectively and prospectively

EIGHTH: SENTINEL Trust Company and its directors had engaged legal counsel and other trusted professionals to represent them in administering defaulted bond issues and relied on their professional expertise and counsel. James A. Skinner (SKINNER), doing business as Cumberland & Ohio Company of Texas, was engaged in late 1997 as SENTINEL's workout specialist and Waller, Lansden Dortch & Davis (WALLER-LANSDEN) was engaged as legal counsel in early 1998. In July, 2000, in response to recommendations ensuing from its first examination by DEPARTMENT and, with the recommendation of WALLER-LANSDEN, SENTINEL hired Paul Williams (WILLIAMS) as Executive Vice President for Corporate Trust Administration to prepare policies and procedures, oversee the administration of indenture trusteeships and handle the invoicing and work with SKINNER in managing the defaulted bond issues. The duties of WILLIAMS included the review, approval and payments for invoices

submitted by SKINNER, WALLER-LANSDEN and other professionals for services rendered in connection with defaulted bond issues.

(a) During the period 1997 through April, 2004, SENTINEL paid SKINNER consulting fees of more than \$1,600,000 pursuant to semi-monthly invoices rendered in connection with services related to defaulted bond issues and paid WALLER-LANSDEN approximately \$4,000,000 pursuant to monthly invoices rendered in connection with services related to defaulted bond issues, typically by check drawn on SENTINEL's master deposit accounts held at NationsBank, later SunTrust Bank, and charged against the trust accounts for whose benefit the services had been rendered.

(b) SKINNER and WALLER-LANSDEN received timely payment for services in due course following submission of invoices, knew that in many cases the cumulative payments for such services exceeded the actual cash held for defaulted bond issues, but nevertheless submitted invoices for payment and took such payments without objection.

(c) The payments to SKINNER, WALLER-LANSDEN and other professionals comprise most of the receivables owed by defaulted bond issues to the "pooled fiduciary account."

NINTH: The DEPARTMENT, all its officers, and Plaintiffs are estopped from asserting the claims they assert by virtue of the DEPARTMENT's prior knowledge and acceptance of this methodology for a period of years before Plaintiff LAVENDER became commissioner thereof. As evinced by all the circumstances, LAVENDER has pursued SENTINEL with single-minded intensity for the purpose of destroying it (as admitted by him through his attorney in open court in the Davidson County Chancery Court on August 5, 2004), in total disregard of the text of the Tennessee Banking Act which he is obligated to follow, and in apparent ignorance of the accepted method of operation of trust companies throughout the country, to whose requirements SENTINEL and Defendant Danny N. Bates have rigorously adhered.

WHEREFORE, Defendants DEMAND A JURY for the trial of this case, and pray that the Court determine that the course of persecution of SENTINEL by the DEPARTMENT and Plaintiffs has been and is illegal, and that the Court accordingly dismiss the case with prejudice and at the Plaintiffs' cost..

Respectfully submitted,



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### CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing pleading have been mailed this 19th day of July, 2005, to the following:

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